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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,886

04/15/2005

Giuseppe De' Longhi

23280

6116

535 7590 01/07/2010

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EXAMINER

TEATERS, LINDSEY C

ART UNIT

PAPER NUMBER

3742

NOTIFICATION DATE

DELIVERY MODE

01/07/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/531,886	<b>Applicant(s)</b> DE' LONGHI, GIUSEPPE	
	<b>Examiner</b> LINDSEY C. TEATERS	<b>Art Unit</b> 3742	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The amendment filed 10/07/2009 has been entered. Claims 12-19 remain pending in the application.

#### ***Response to Arguments***

2. Applicant's arguments filed 10/07/2009 have been fully considered but they are not persuasive. Applicant argues on page 4, paragraph 3 of remarks that Taniguchi does not show a tube extending downward. The term "downward", however, depends on orientation. Even assuming that the tube only reaches a horizontal lowest position, it would be readily recognized by one of ordinary skill in the art to tilt the valve to suit a necessary flow, and as such this feature does not establish patentability. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the teachings of Rigney with Taniguchi is to provide a valve for the frying assembly of Rigney which has more specific flow regulation capabilities, which is beneficial to any draining process.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taniguchi (US 4,850,540) in view of Rigney 9US 2001/0054358 A), cited by applicant.

Re claims 12-19:

Taniguchi teaches a drain assembly comprising a housing (1) connected to a vessel (col. 2, lines 62-64) forming a valve seat and formed with a passage (1c) opening into the vessel and into the seat (col. 2, lines 62-64), a valve body (2) formed with a passage (2a) and pivotal in the seat between an open position (figure 1) with the passage of the valve body aligned with the passage of the housing and a closed position (figure 3) with the passage of the valve body not aligned with the passage of the housing, a rigid tube (4) fixed to and pivotal with the valve body and formed with a passage opening into the passage of the valve body (see figure 4), the body being pivotal in the housing such that in the closed position the tube extends upward from the housing and in the open position the tube extends downward from the housing, wherein the housing includes a connecting tube (1b) extending between the seat and the vessel, the connecting tube extends downward from the vessel to the seat (depending on orientation of connection to vessel, it is a relative limitation, and does not patentably distinguish), the housing has an inner surface (inside 1) on which the passage of the housing opens and the valve body fits complementarily to the inner surface, the housing fits around the valve body and is formed with a slot (figure 4) through which the tube projects from the valve body out of the housing, the slot has opposite ends (where 1a meets housing 1 on either end) against which the tube bears in the open and closed positions, in the closed position the tube

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extends vertically upward from the housing (figure 3), and the tube is unitary with the valve body (one piece, see figures).

Taniguchi fails to teach that the vessel is a food fryer having a body of oil in the vessel in which food is fried. Rigney, however, teaches a fryer (20, paragraph [0010]) holding oil (paragraph [0011]) with a drain (26) from which the oil is discharged.

In view of Rigney's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize the drain assembly, taught by Taniguchi, in conjunction with a food cooker. The device is a simple valve construction used to block, regulate, or convey fluid flow there through. This type of assembly is useful in any situation where fluid should be drained from any type of vessel, regardless of its intended use. Also, the idea of regulating flow is well known in this art and many others not only through the use of this type of valve but also with butterfly valves, etc.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY C. TEATERS whose telephone number is 571-270-5913. The examiner can normally be reached on Mon-Thur 8:30am-6:00pm :: alternating Fri 8:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LINDSEY C TEATERS/  
Examiner, Art Unit 3742

/Henry Yuen/  
Supervisory Patent Examiner,  
TC 3700

12/30/2009